

REMARKS

Applicant responds herewith to the final Office Action mailed August 9, 2011. In the Office Action, Claims 1-29 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Serkin et al. (US 2002/0161687, hereinafter "Serkin") in view of Anaya et al. (US 7,454,372, hereinafter "Anaya"). However, there is no combination of Serkin and Anaya that teaches or suggests all of the elements of Claims 1-29. Therefore, the final Office Action failed to establish a *prima facie* basis for rejecting the claims. Reconsideration of the claims and allowance of the application is respectfully requested.

Claims 1-29 Are Patentable Over The Cited Art

Claim 1

Claim 1 is directed to a computer-implemented method of facilitating trading at a market, and recites, in part:

automatically receiving from the market, at the market participant's computer, notification of a new contra-side best market price that was provided to the market by another market participant for the trade, wherein the notification of the new contra-side best market price is received from the market in advance of the other market participants as a result of satisfying the market-related condition and only while the market-related condition is satisfied by the input received at the market participant's computer.

The final Office Action (pages 2-3) conceded that Serkin¹ fails to teach or suggest the above-quoted elements of Claim 1, and instead relied upon Anaya, citing Col. 21, lines 52-61, and Col. 23, lines 24-31. Applicant agrees that Serkin is deficient with regard to Claim 1, but respectfully disagrees that Anaya overcomes the deficiencies of Serkin.

Anaya purports to disclose market event alerts and user access to monitoring data. As indicated in the Abstract, Anaya discloses "[a] method of detecting alert conditions [that]

¹ Throughout the final Office Action, the Examiner frequently referred to "Kalmus." From the context of the Office Action, applicant believes the Examiner meant to refer to "Serkin" in such circumstances. Applicant is responding accordingly.

includes receiving an electronic market event message for a new quote from a market participant, requesting a previous quote for the items, and determining whether the new quote is higher or lower than the previous quote." Anaya further states that "[t]he method also includes sending an electronic alert from the alert engine in response to the new quote being a bid and higher than the previous quote."

According to Anaya, processes for detecting and/or resolving various types of alert conditions are found in individual alert components 187-192 and coordinator components 199-201, as illustrated in Figure 11. These processes purport to use data such as quotes, trading prices, trading volumes, and/or the existence of special market conditions to detect and resolve alert conditions. The data for detecting and/or resolving alerts enters the market monitoring system 10 via incoming Nasdaq Quote Data Service (NQDS) messages received by line handlers 18, 18'. See, e.g., Col. 21, lines 43-51, of Anaya.

At Col. 21, lines 52-61 (as cited in the final Office Action), Anaya explains:

To detect some types of alerts, the alert components 187-201 use published offers of market participants. The published offer prices at which the market participants will buy and/or sell specified securities are referred to as bid and ask quotes, respectively. The most aggressive quotes define the inside quotes. The inside ask quote is the lowest ask quote. The inside bid quote is the highest bid quote. Separate inside quotes are defined for each type of trading security. New quotes are received in incoming NQDS messages from the feed lines 12.

As noted, the alert components of Anaya use *published offers* of market participants. The published offer prices, referred to as bid and ask quotes, are published to all market participants at the same time via the NQDS. Whether a quote is a "new quote" or a "previous quote," it is still a quote that is published to all market participants. Anaya nowhere teaches or suggests "automatically receiving from the market, at [a] market participant's computer, notification of a new contra-side best market price that was provided to the market by another market participant for the trade, wherein the notification of the new contra-side best market price is received from the market *in advance of the other market participants as a result of satisfying the market-*

related condition and only while the market-related condition is satisfied by the input received at the market participant's computer," as claimed in Claim 1.

According to the present application, a market participant may get a "first look" at market data such as a new contra-side best market price provided by another market participant, before the other market participants. To obtain this benefit, the market participant satisfies a market-related condition. The first look feature is an incentive to traders to satisfy the condition in order to receive advance notification of a new contra-side best market price. See, e.g., Figure 76, and page 32, line 27, to page 33, line 8, and further at page 90, lines 19-27.

The final Office Action further cited Anaya at Col. 23, lines 24-31, which states:

Broker/dealers executing trades of Nasdaq or exchange-listed (CQS) issues must report trades to Nasdaq within 90 seconds. Nasdaq reports these trades to the public via NTDS messages. The line handlers 18, 18' receive incoming messages for trades from the feed lines 12. These incoming messages produce the QTC alerts detected by the market monitoring system 10 of FIG. 1.

Anaya's disclosure of reporting trades to Nasdaq does not teach or suggest "receiving from the market, at the market participant's computer, notification of a new contra-side best market price that was provided to the market by another market participant for the trade," nor does it suggest that the "notification of the new contra-side best market price is received from the market in advance of the other market participants as a result of satisfying the market-related condition and only while the market-related condition is satisfied by the input received at the market participant's computer." To the contrary, Anaya relies on orders and quotes that are published to all market participants via Nasdaq's quote service.

To the extent that Anaya transmits an alert, such alerts do not constitute "notification of [a] new contra-side best market price . . . in advance of the other market participants as a result of satisfying the market-related condition and only while the market-related condition is satisfied by the input received at the market participant's computer." The alerts merely raise issues regarding current quotes (that have already been published to the market participants) such as

quotes causing a locked or crossed market condition (Col. 1, lines 38-40), an existing quote differing from a previous quote by more than a predetermined amount (Col. 1, lines 48-50, and Col. 2, lines 1-3), an existing quote differing by more than a predetermined amount and the item being a component of an option, future, or a market index (Col. 1, lines 57-60), a trade report being late (Col. 2, lines 9-11), a trade occurring during a trading halt (Col. 2, lines 16-18), and a difference between predicted trading data and data describing a portion of a trade being greater than a preselected amount (Col. 2, lines 26-28).

Nowhere does Anaya teach or suggest that notification of a new contra-side best market price is received from a market by a market participant in advance of other market participants as a result of the market participant satisfying a market-related condition. It should be noted that, according to Claim 1, a market participant "is a *trading party*" that is "participating in the market with other market participants." In contrast to Anaya's disclosure, where market participants using systems such as Nasdaq receive published quotes at the same time, a market participant according to Claim 1 "receiv[es] from the market . . . notification of a new contra-side best market price that was provided to the market by another market participant . . . *in advance of the other market participants* as a result of satisfying the market-related condition and only while the market-related condition is satisfied by the input received at market participant's computer." (Emphasis added.) Applicant therefore submits that a *prima facie* basis for rejecting Claim 1 has not been established.

In addition, while the final Office Action (page 2) conceded that Serkin fails to disclose "receiving from the market, at the market participant's computer, notification of a new contra-side best market price that was provided to the market by another market participant for the trade, wherein the notification of the new contra-side best market price is received from the market in advance of the other market participants as a result of satisfying the market-related condition and only while the market-related condition is satisfied by the input received at the

market participant's computer," the final Office Action did not identify any disclosure in Anaya that teaches these features of Claim 1.

Instead, the final Office Action (pages 2-3) merely quoted Anaya at Col. 21, lines 52-61, and alleged that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Kalmus [sic - Serkin] to include wherein the market participants can execute a trade for the security at the published price wherein the market." Whether "market participants can execute a trade for the security at the published price" as alleged in the final Office Action is irrelevant to the patentability of Claim 1. After conceding the elements of Claim 1 that Serkin fails to teach, the final Office Action did not allege any disclosure in Anaya commensurate with what is missing in Serkin. For at least this additional reason, applicant submits that a *prima facie* basis for rejecting Claim 1 has not been established.

In prior responses, applicant has noted that, according to the Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 U.S.P.Q.2d 1385, 1395-97 (2007), the key to supporting any rejection under 35 U.S.C. § 103 is a clear articulation of the reason(s) why the claimed invention would have been obvious. See also M.P.E.P. § 2143. The final Office Action did not identify any aspects of Anaya's disclosure that constitute receiving "notification of a new contra-side best market price . . . in advance of the other market participants." Applicant has carefully studied the disclosure of Anaya, and respectfully submits there is no disclosure in Anaya that overcomes the deficiencies of Serkin.

Because Serkin and Anaya, in any combination, fails to disclose or suggest all of the elements of Claim 1, applicant submits that the basis for rejecting Claim 1 under Section 103 is mistaken and should be withdrawn.

Claims 2, 3, and 21-25

The rejection of Claims 2, 3, and 21-25 should also be withdrawn. Claims 2, 3, and 21-25 are patentable over Serkin and Anaya, both for their dependence on Claim 1 and for the additional subject matter they recite.

Claim 4

Claim 4 is directed to a computer-implemented method of facilitating trading at a market. The method, as claimed, includes "automatically . . . selecting a party to receive notification of a new contra-side best market price for a trade at the market in advance of other market participants, wherein the selected party is a market participant participating in a market with the other market participants, wherein the selected party has provided a price for a side of the trade at the market, and wherein the new contra-side best market price is provided by a market participant other than the selected party" and "automatically . . . notifying the selected party of the new contra-side best market price for the trade in advance of notifying the other market participants."

The method of Claim 4 further includes "automatically . . . measuring a predetermined time from when notification of the new contra-side best market price was sent to the selected party and, after the predetermined time has elapsed, notifying the other market participants of the new contra-side best market price."

The final Office Action (page 3) rejected Claim 4 as allegedly being unpatentable over Serkin in view of Anaya. Applicant disagrees for reasons similar to those discussed above relative to Claim 1, and submits that a *prima facie* basis for rejecting Claim 4 has not been established.

The final Office Action asserted that Serkin teaches "selecting a party to receive notification of a new contra-side best market price for a trade at the market in advance of other market participants," citing page 1, paragraphs [0003], [0004], and [0006]; page 4, paragraph

[0054]; page 5, paragraph [0060]; page 6, paragraph [0073]; and page 7, paragraph [0080] of Serkin.² Applicant respectfully disagrees.

Serkin is directed to a market system that includes an internal execution process. According to the Abstract of Serkin, "[t]he system includes an order execution process that receives orders and matches orders against quotes posted in the system on a time priority basis." While Serkin also teaches "an order match-off process that checks if a market participant identification associated with a received order matches a market participant identification representing a quote in the system that is at the best bid or best offer price in the system," nowhere does Serkin teach or suggest *"selecting a party to receive notification of a new contra-side best market price for a trade at the market in advance of other market participants,"* as claimed in Claim 4.

Serkin also fails to teach or suggest *"measuring a predetermined time from when notification of the new contra-side best market price was sent to the selected party and, after the predetermined time has elapsed, notifying the other market participants of the new contra-side best market price,"* as claimed in Claim 4. The final Office Action cited Serkin at page 1, paragraphs [0003] and [0006]; page 4, paragraph [0054]; page 5, paragraph [0060]; page 6, paragraph [0073]; and page 7, paragraph [0080], but these passages do not teach what is claimed.

The final Office Action conceded that Serkin fails to teach "wherein the new contra-side best market price is provided by a market participant other than the selected party." However, the disclosure in Anaya does not overcome this deficiency or the other deficiencies of Serkin discussed above, notwithstanding the passages at Col. 21, lines 52-61, and Col. 23, lines 24-31, of Anaya, as cited in the final Office Action and quoted above.

² The final Office Action cited to "columns" and "paragraphs" of Serkin. However, Serkin does not have numbered columns. Instead, Serkin has numbered pages. Applicant therefore has interpreted the references to "columns" to instead mean "pages."

In view of the elements of Claim 4 that are missing in Serkin and Anaya, applicant submits that the rejection of Claim 4 should be withdrawn. Allowance of Claim 4 is merited.

Claims 5-7, 26, and 27

Claims 5-7, 26, and 27 are also patentable over Serkin and Anaya, both for their dependence on allowable Claim 4 and for the additional subject matter they recite.

Claim 8

Claim 8 is directed to a system for facilitating trading at a market. The system includes "a computer having a processing component and a memory." The final Office Action (page 4) rejected Claim 8 as allegedly being unpatentable over Serkin in view of Anaya. However, as similarly argued with respect to Claim 4, nothing in Serkin suggests "instructions stored in the memory that cause a processing component to *select a party to receive notification of a new contra-side best market price for a trade at the market in advance of other market participants,*" as claimed in Claim 8. Serkin also fails to teach or suggest "instructions stored in the memory that cause the processing component to *measure a predetermined time from when notification of a new contra-side best market price is sent to the selected party and, after the predetermined time has elapsed, to notify the other market participants of the new contra-side best market price.*" (Emphasis added.)

Serkin teaches a market system that includes an internal execution process that "receives orders and matches orders against quotes posted in the system on a time priority basis." (See, e.g., the Abstract of Serkin.) Serkin also teaches "an order match-off process that checks if a market participant identification associated with a received order matches a market participant identification representing a quote in the system that is at the best bid or best offer price in the system." Nevertheless, Serkin does not teach or suggest "select[ing] a party to receive notification of a new contra-side best market price for a trade at the market in advance of other market participants."

The final Office Action conceded that Serkin fails to teach "wherein the new contra-side best market price is provided by a market participant other than the selected party." However, as similarly argued with respect to Claim 4, applicant has studied Anaya at Col. 21, lines 52-61, and Col. 23, lines 24-31, as well as the remaining disclosure of Anaya, and finds nothing that overcomes this deficiency or the other deficiencies of Serkin discussed above.

In the absence of specific disclosure from Serkin and Anaya supporting a *prima facie* case of obviousness, applicant submits that allowance of Claim 8 is warranted.

Claims 9-12

Claims 9-12 are also patentable over Serkin and Anaya, both for their dependence on allowable Claim 8 and for the additional subject matter they recite.

Claim 13

Claim 13, as amended, is directed to a non-transitory computer-accessible medium having executable instructions stored thereon for facilitating trading at a market. In response to execution by a computer, the instructions cause the computer to *"select a party to receive notification of a new contra-side best market price for a trade at the market in advance of other market participants, wherein the selected party is a market participant participating in the market with the other market participants, wherein the selected party has provided a price for a side of the trade at the market, and wherein the new contra-side best market price is provided by a market participant other than the selected party."*

The instructions further cause the computer to *"notify the selected party of the new contra-side best market price for the trade in advance of notifying the other market participants,"* to *"measure a predetermined time from when notification of the new contra-side best market prices is sent to the selected party,"* and *"after the predetermined time has elapsed, to notify the other market participants of the new contra-side best market price."*

The final Office Action (page 6) conceded that "Kalmus [sic - Serkin] fails to explicitly teach wherein the new contra side best market prices is provided by a market participant other

than the selected party in advance of notifying the other market participants," and instead relied on Anaya. Applicant disagrees that Anaya overcomes the deficiencies of Serkin.

For at least reasons similar to those discussed above with regard to Claims 1 and 8, applicant submits that the rejection of Claim 13 based on Serkin and Anaya is without support in the respective disclosures and should be withdrawn. Allowance of Claim 13 is respectfully requested.

Claims 14-17

The rejection of Claims 14-17 should also be withdrawn, both for their dependence on allowable Claim 13 and for the additional subject matter they recite.

Claim 18

Claim 18, as amended, is directed to a non-transitory computer-accessible medium having executable instructions stored thereon for facilitating trading at a market. The market has "a best market price for a side of a trade at the market and a best market price for a contra-side of the trade at the market." In response to execution by a computer, the instructions cause the computer to *"receive an order having a new price for a side of the trade at the market"* and *"determine whether the new price is better than the best market price for the side of the market."* Further, "in response to receiving an order having a new price that is better than the best market price for the side of the trade at the market," the instructions cause the computer to *"identify a trading party that is currently providing the best market price for the contra-side of the trade at the market, wherein the trading party is different from the party from whom the order having the new price is received"* and to *"notify the trading party of the new price, wherein the notification is sent to the trading party in advance of sending notification of the new price to other market participants in the market."* The trading party is thus "given a first look at the new price before the other market participants."

The final Office Action (pages 7-8) relied on a combination of Serkin and Anaya as allegedly disclosing the elements of Claim 18. Applicant respectfully disagrees.

Arguments similar to those discussed above with respect to Claims 1, 4, 8, and 13 are applicable to Claim 18. Applicant respectfully submits that Serkin does not teach or suggest what is claimed in Claim 18 and Anaya fails to make up the difference.

Because the cited art does not support a *prima facie* basis for rejecting Claim 18 under Section 103, the rejection of Claim 18 should be withdrawn.

Claims 19 and 20

The rejection of Claims 19 and 20 should also be withdrawn, both for their dependence on allowable Claim 18 and for the additional subject matter they recite.

Claims 28 and 29

Lastly, Claim 28 recites a computer system that is configured to facilitate trading at a market. The computer system includes "*means for receiving input from a market participant providing a price for a side of a trade at the market, wherein the market participant is a trading party participating in the market with other market participants, and wherein the input satisfies a market-related condition by providing the best market price for the side of the trade at the market.*"

The computer system further includes "*means for receiving from the market a new contra-side best market price for the trade provided by another market participant, wherein notification of the new contra-side best market price is received from the market in advance of the other market participants as a result of satisfying the market-related condition and only while the market-related condition is satisfied by the received input.*"

The final Office Action (page 10) conceded that "Kalmus [sic - Serkin] fail to explicitly teach that was provided by the other market participant, wherein notification of the new contra side best market prices is received from the market," and relied further on Anaya. However, for at least reasons similar to those discussed above, including with respect to Claim 1, applicant submits there is no combination of Serkin and Anaya that renders obvious the elements of Claim 28.

Claim 29 is directed to a computing device that facilitates trading at a market. The combination of elements recited in Claim 29 is neither taught nor suggested by Serkin and Anaya, as discussed above, e.g., with respect to Claim 8. For example, Serkin does not teach or suggest *"select[ing] a party to receive notification of a new contra-side best market price for a trade at the market in advance of notifying other market participants,"* nor does Serkin teach or suggest *"measur[ing] a predetermined time from when notification of the new contra-side best market price is sent to the selected party."*

The final Office Action (page 11) conceded that Serkin fails to teach a processor in a computing device configured to *"notify the other market participants of the new contra-side best market price after the predetermined time has elapsed."* Additionally, the Office Action stated that "Kalmus [sic - Serkin] fail to explicitly teach wherein the new contra-side best market price is provided by a market participant other than the selected party." Applicant submits in reply that Anaya does not make up the deficiencies of Serkin, particularly considering the additional deficiencies of Serkin noted above.

For at least the reasons discussed above, the rejection of Claim 29 should be withdrawn and the claim allowed.

CONCLUSION

Applicant submits that the disclosure of Serkin is deficient and the disclosure of Anaya fails to make up the difference. In view of the lack of specific disclosure that teaches or suggests what is claimed in Claims 1-29, a *prima facie* case of obviousness has not been established. Therefore, the claim rejections should be withdrawn and the claims allowed. Should any issues remain, the Examiner is invited to contact the undersigned counsel by telephone.

Respectfully submitted,

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